

(2011) 02 DEL CK 0368

In the Delhi High Court

Case No : Writ Petition (C) 607 of 2011

Rajender Kumar and Another

APPELLANT

Vs

The High Court of Delhi and Another

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Delhi Higher Judicial Services Rules, 1970 — Rule 15, 17, 28, 33, 7

Citation : (2011) 02 DEL CK 0368

Hon'ble Judges : Manmohan Singh, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : V. Shekhar, Abhigya, C.B. Sharma and Deepakshi Jain, for the Appellant; Rajiv Bansal, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This writ petition has been filed by two candidates, who had appeared in the Delhi Judicial Service Examination 2010 under the "Scheduled Castes" category, but were unsuccessful because they did not obtain the minimum prescribed marks of 45% in the viva-voce test, although they had cleared the preliminary examination as well as they had qualified for being called for the interview. The Petitioners are, inter alia, seeking a mandamus directing the Respondent No. 1 (Delhi High Court) to consider the Petitioners as qualified and selected and to subsequently appoint them to the posts of Civil Judge or Metropolitan Magistrate, as the case may be. The Petitioners also seek a direction that the entire recruitment procedure adopted during the Delhi Judicial Service Examination 2010 be declared as null and void and that all the selections made pursuant thereto be struck down inasmuch as, according to them, the recruitment procedure, at least insofar as the Scheduled Caste candidates are concerned, suffered from serious infirmities. Consequently, they seek a writ directing the High Court to undertake fresh recruitment.

2. On 26.10.2009, a public notice was issued by the Respondent No. 1 indicating that the Delhi Judicial Service Examination would be held in two successive

stages. The first was to comprise of a preliminary examination and, the second stage, of a main written examination for the purposes of selecting the candidates for calling them for the viva-voce test. The number of vacancies, which were required to be filled as per the said notification, were as under:

Category

No. of posts

Remarks

General

27

SC

14

ST

14

Physically handicapped (Blind / Low Vision)

05

01 vacancy carried forward and advertised for the fifth time. 01 vacancy carried forward and advertised for the third time. 02 vacancy carried forward and advertised for the second time. 01 vacancy being advertised for the first time.

3. It is an admitted position that both the Petitioners cleared the preliminary examination. They also sat in the main written examination, the result of which was declared on 02.11.2010. The Petitioner No. 1 (Rajender Kumar) was shown at S. No. 211 and had obtained 437.5 marks out of a total of 850 marks and was declared as qualified for the purpose of being called for the viva-voce test. The Petitioner No. 2 (Rakesh Kumar) was shown at S. No. 216 and it was indicated that he had obtained 415.5 marks out of 850 and was also qualified for the viva-voce test.

4. On 26.11.2010, the Respondent No. 1 took out a notice indicating the interview schedule. Both the Petitioners were called for interview on 13.12.2010. On 24.12.2010, the Respondent No. 1 notified the final result of the candidates in order of merit prepared by the Selection Committee on the basis of the said competitive examination. The marks obtained by the candidates in the written examination as well as the viva-voce test were also mentioned in the said notice. The Petitioner No. 1's name appeared at S. No. 120. He had obtained, as aforesaid, 437.5 marks out of 850 in the written examination and in the viva-voce test, he obtained 65 marks out of a maximum of 150 marks. His total came to 502.5 marks out of 1000. Similarly, the Petitioner No. 2 (Rakesh Kumar), whose name appeared at S. No. 127, obtained 63 marks out of a maximum of

150 marks in the viva-voce test and thereby he obtained a total of 478.5 out of a maximum of 1000 marks. However, both of them were declared as not qualified for selection because they did not clear the minimum percentage marks of 45% in the viva-voce test. Consequently, the Petitioners were not selected. Being aggrieved by this, the Petitioners have filed the present petition for the reliefs mentioned above.

5. The learned Counsel for the Petitioners made three submissions. The first submission was that the viva-voce test could not have any prescribed minimum marks. He placed reliance on the decision of the Supreme Court in the case of Ramesh Kumar Vs. High Court of Delhi and Another, as well as on the Shetty Commission report to submit that no minimum marks can be prescribed in the case of a viva-voce test.

6. The second submission of the learned Counsel for the Petitioners was that the backlog of vacancies of the Scheduled Caste candidates had not been indicated and, therefore, this was a serious infirmity in the selection process.

7. The third plea taken by the Petitioners was that the constitution of the Selection Committee, which took the viva-voce test, was not in accordance with law. He also submitted that the Selection Committee, which admittedly was in terms of Rule 7 of the Delhi Judicial Service Rules, 1970 (hereinafter referred to as the "DJS Rules"), was contrary to the Office Memorandum dated 04.06.2010, wherein it was specifically mentioned that where the number of vacancies are in excess of 10, there must be at least one member of the Scheduled Caste / Scheduled Tribe as well as of a minority community in the Selection Committee. He submitted that it is an admitted position that the Selection Committee, which took the viva-voce test in this case, did not comprise of any SC / ST or a minority community member and, therefore, the selection was bad. The learned Counsel placed reliance on Rule 28 of the DJS Rules to submit that the recruitment was subject to orders issued by the Central Government from time to time. He, therefore, submitted that the Office Memorandum dated 04.06.2010 had been contravened and, therefore, the Selection Committee was not duly constituted.

8. Mr Bansal, appearing on behalf of the Delhi High Court (Respondent No. 1), submitted that the argument with regard to a minimum percentage mark being prescribed for the viva-voce examination is no longer available to the Petitioners in view of the clear decision of this Court in the case of Kunal Kishor and Anr. v. Lt. Governor and Another [WP(C) 10787/2009 decided on 21.05.2010]. Secondly, he submitted that insofar as the issue of backlog is concerned, 14 SC vacancies and 14 ST vacancies were advertised on 26.10.2009 for the examination in question. These included 5 backlog vacancies of the SC category and 10 backlog vacancies of the ST category. Thirdly, Mr Bansal submitted that the constitution of the Selection Committee was strictly in accordance with Rule 7 of the DJS Rules and, therefore, was valid in law. He submitted that the O.M. dated 04.06.2010 would not have any applicability to the constitution of the

Selection Committee in view of the fact that the rules specifically provided for the same. He also submitted that Rule 28 operated in a different field and it dealt with the issue of "special representation" and "other concessions" and not in the field of the constitution of the Selection Committee. Furthermore, he drew our attention to Rule 33 of the DJS Rules which dealt with residuary matters. On the strength of the said Rule 33, he submitted that it is only when the rules were silent that the other rules or orders, which were applicable to Government Servants holding corresponding posts in connection with the affairs of the Union of India, would regulate the conditions of such service. In the present case, the DJS Rules were clear and explicit and, therefore, the said O.M. dated 04.06.2010, in any event, had no application.

9. Having considered the arguments advanced by the counsel for the parties, we are in agreement with the submissions made by Mr Bansal that the first issue with regard to minimum marks being prescribed for the viva-voce examination already stands settled by virtue of the decision of another Division Bench of this Court in the case of Kunal Kishor (supra). That decision also referred to the Supreme Court decision in the case of Ramesh Kumar (supra) and came to the conclusion that prescription of minimum marks in the viva-voce test would be erroneous in the absence of any statutory rules in that behalf. The Division Bench observed as under:

14. The upshot of the aforesaid judgment thus is that unless there are statutorily specific rules providing for minimum marks for viva-voce, the existing rules would not permit such minimum marks for viva-voce to be prescribed.

10. It is, therefore, clear that once there are statutory rules which prescribe minimum marks for viva-voce, it cannot be contended that those minimum marks would not be applicable. A reference to paragraph 13 of the Supreme Court decision in the case of Ramesh Kumar (supra) would also clarify this. The same reads as under:

13. In *Durgacharan Misra Vs. State of Orissa and Others*, , this Court considered the Orissa Judicial Service Rules which did not provide for prescribing the minimum cut-off marks in interview for the purpose of selection. This Court held that in absence of the enabling provision for fixation of minimum marks in interview would amount to amending the rules itself. While deciding the said case, the Court placed reliance upon its earlier judgments in *B.S. Yadav and Ors. v. State of Haryana and Ors.* : 1980 Supp SCC 524, *P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others*, and *Umesh Chandra Shukla Vs. Union of India (UOI) and Others*, , wherein it had been held that there was no "inherent jurisdiction" of the Selection Committee / Authority to lay down such norms for selection in addition to the procedure prescribed by the Rules. Selection is to be made giving strict adherence to the statutory provisions and if such power i.e. "inherent jurisdiction" is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm.

(underlining added)

From the above, it is clear that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly.

11. Rule 15 of the DJS Rules clearly stipulates that syllabus for the examination and the fee payable shall be as detailed in the Appendix to the Rules. Rule 17 also stipulates that for the viva-voce test, the Selection Committee shall call only those candidates who have qualified in the written test as provided in the Appendix. The Appendix to the said Rules prescribes the syllabus as well as the other details with regard to the break-up of marks and the minimum qualifying marks. With regard to the viva-voce, the Appendix prescribes the following:

?5)

Viva-Voce

Viva-Voce will carry 150 marks. Only such candidates will be called for viva-voce who have obtained 40% marks in each written paper and 50% marks in the aggregate except in the case of candidates belonging to reserved categories i.e. Scheduled Castes, Scheduled Tribes and Physically Handicapped (Blind/Low Vision) (mobility not to be restricted) / Orthopedically in whose case the qualifying marks shall be 35% in each written paper and 45% in the aggregate. A candidate of general category must secure minimum 50% marks and a candidate of reserved category i.e. Scheduled Castes, Scheduled Tribes and Physically Handicapped (Blind/Low Vision) (mobility not to be restricted) / Orthopedically must secure minimum 45% marks in viva-voce to be eligible for being recommended for appointment to the service.

12. Thus, the DJS Rules clearly stipulate that a candidate of the General Category must secure in the minimum 50% marks and a candidate of the reserved category, which includes the Scheduled Castes / Schedule Tribes, must secure a minimum of 45% marks in viva-voce to be eligible for being recommended for appointment to the service. Clearly, the stipulation of minimum marks in the viva-voce is provided for in the statutory rules. Therefore, the contention of the learned Counsel for the Petitioners cannot be accepted in view of the clear decisions of the Supreme Court in the case of Ramesh Kumar (supra) and of this Court in the Kunal Kishor (supra). The minimum marks for viva-voce have been prescribed by the statutory rules and have to be strictly adhered to.

13. The grievance with regard to the backlog of vacancies does not, in any event, survive because the Petitioners have not crossed the threshold of obtaining the minimum marks. In any event, the learned Counsel appearing for the Respondent No. 1 has clarified the position with regard to backlog and has stated that there were 5 SC vacancies and 10 ST vacancies which were in arrears and which were included in the advertised 14 SC and 14 ST vacancies for the Delhi Judicial Service Examination 2010.

14. We now come to the third and last contention made on behalf of the

Petitioners and that is with regard to the applicability of the O.M. dated 04.06.2010. Here again, we are in agreement with the submission made by Mr Bansal appearing on behalf of the Respondent No. 1 that Rule 28 of the DJS Rules cannot be pressed into service by the Petitioners for applying the said O.M. dated 04.06.2010. Rule 28 reads as under:

28. Recruitment made to the service by competitive examination shall be subject to orders regarding special representation and other concessions for the schedule Castes and Schedule Tribes and ex-servicemen including Emergency Commissioned Officers and Short Service Commissioned Officers issued by the Central Government from time to time.

It is clear from a plain reading of the said Rule that the recruitment made to the service by competitive examination is subject to orders regarding (a) "special representation" and; (b) "other concessions" pertaining to Scheduled Castes and Scheduled Tribes, etc. Insofar as "special representation" is concerned, that has already been taken care of by reserving 14 vacancies for the Scheduled Castes and 14 vacancies for the Scheduled Tribes. As regards the "other concessions", that has also been taken care of by relaxing the minimum qualifying marks from 50% to 45%. It is only to the extent of "special representation" and "other concessions" that the said Rule 28 makes the recruitment to the service subject to orders of the Central Government. It does not mean that the entire recruitment process, including the constitution of the Selection Committee, would be subject to orders of the Central Government. The said O.M. dated 04.06.2010 is clearly inapplicable in the wake of the explicit provision of Rule 7 of the DJS Rules. Thus, no fault can be found with the constitution of the Selection Committee inasmuch as the same is strictly in compliance with Rule 7 of the DJS Rules.

15. We may also point out that this challenge by way of this writ petition has come only after the Petitioners have gone through the entire process of appearing for the preliminary examination, the main written examination as also the viva-voce test and only when they found that they were unsuccessful. This is apart from the question that they otherwise do not have any case on merits.

The writ petition is dismissed. No order as to costs.